

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WISCONSIN**

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In re:

CRAPP FARMS PARTNERSHIP

Debtor.

Chapter 11  
Case No. 3-17-11601-cjf

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**DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING USE  
OF CASH COLLATERAL AND (B) GRANTING ADEQUATE PROTECTION**

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Crapp Farms Partnership, d/b/a Crapp Farms, d/b/a Crapp Land, d/b/a Crapp Excavating and d/b/a Crapp Farms Trucking, the debtor and debtor in possession herein (the "Debtor"), makes this motion under 11 U.S.C. §§ 361 and 363(c), Federal Rules of Bankruptcy Procedure 4001(b)(1) and 9014, for the entry of an order (i) authorizing Debtor to use cash collateral; (ii) granting adequate protection; (iii) setting a hearing on the motion to consider the entering of an interim order authorizing and approving the use of Cash Collateral pending a final hearing on the motion; and (iv) setting a final hearing on this motion. The facts and circumstances supporting this Motion are set forth below. This Motion is further supported by the Declaration of Darrell C. Crapp in Support of First Day Motions (the "Crapp Declaration").

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to hear this motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. This Court is the proper venue for this motion under 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

3. On May 3, 2017 (the "Petition Date"), the Debtor commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to

operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. No request for appointment of a chapter 11 trustee has been made and, as of the date hereof, no official committee has been appointed.

5. The Debtor's primary source of income is the proceeds it receives from its livestock, trucking and excavating operations. The Debtor has no other substantial source of income upon which it can rely to continue its operations.

6. Over the years, to fund its farming operations, Crapp Farms has entered into numerous loan transactions with its primary secured lender, BMO Harris, N.A. ("BMO"). The loan documents include mortgages granting BMO a first lien on Crapp Farms' real property containing approximately 2,210 acres along with improvements. BMO also has a valid lien on all of Crapp Farms' real estate, farm equipment, crops and other personal property and interests, as more particularly described on the Collateral Description attached to the Crapp Declaration and incorporated therein by reference as Exhibit 1.

7. As of the petition date, the Debtor estimates the aggregate outstanding indebtedness on the BMO loans is approximately \$28,886,000.00, consisting of numerous promissory notes and other loan transactions.

8. In order to maintain its operations during this reorganization and meet its ordinary business expenses, the Debtor must have immediate access to and the use of its cash collateral. The Debtor has attached to this motion proposed budgets for the use of cash collateral. The line items in the budgets include the normal, ordinary course of business expenses of each operating arm of the Debtor, including employee wages and related withholdings. Copies of the budgets are attached hereto collectively as **Exhibit A.**

9. BMO likely also asserts that harvested crops, including corn, currently being held pending sale by Crapp Farms constitute its cash collateral. Historically and on an annual basis, the Debtor holds back from sale approximately 200,000 bushels of harvested corn from its cropping operations to feed its livestock. In addition, the Debtor also historically sets aside from sale shelled corn, hay, corn silage, earlage, and haylage from its cropping operations for use as feed to its livestock (collective, the “Corn Silage”).

10. In order to specifically maintain its livestock operations, the Debtor also seeks authority to be allowed to hold back from sale approximately 90,000 bushels of harvested corn, and be allowed to retain and use, as necessary during any such interim period as this Court orders, the harvested corn and the Corn Silage as feed for its livestock. The Debtor anticipates that over a sixty-day period, it will use approximately 34,000 bushels of the harvested corn.

11. If the Debtor is not permitted to use cash collateral, the harvested corn, and the Corn Silage, the Debtor will be seriously harmed and may need to close down its operations. Moreover, the going concern value of this enterprise will be lost to the detriment of all creditors and the estate.

12. This motion is intended to provide the Debtor with access to Cash Collateral, the harvested corn, and the Corn Silage on an interim basis and to allow the Debtor and BMO an opportunity to meet without jeopardizing the Debtor’s ongoing operations. The Debtor believes that it should be granted the use of the Cash Collateral because BMO is adequately protected as is evidenced by value of BMO’s collateral as indicated in the Crapp Declaration.

13. In addition, BMO’s interest in the cash collateral will be adequately protected as the Debtor shall provide BMO with a replacement lien, and shall keep all of BMO’s collateral insured.

14. The Debtor shall also commence making monthly adequate protection payments to BMO in the amount of \$20,000.00, and shall provide the payment to BMO immediately upon the entry of the Interim Order, and continuing on or before the 10th day of each subsequent month while the Interim or Final Orders remain in effect. The amount of the proposed adequate protection payment is equal to the combined approximate value of the Debtors' personal property collateral consisting of livestock and equipment at Four Percent (4%) interest, amortized over three (3) years for the livestock and five (5) years for the equipment.

15. "There is an inherent tension between a debtor's need to use its cash to continue operating and a secured creditor's right to preserve its security interest in the debtor's cash proceeds." *In re ProAlert LLC*, 314B.R. 436, 441 (BAP 9th Cir. 2004). The requirement of adequate protection in section 363 balances those divergent interests "by allowing the debtor to use cash collateral while ensuring that the creditor will ultimately receive the full value of the collateral." *Id.*

16. Under section 363(c)(2)(B), the court has the power to authorize the use of cash collateral when "the court, after notice and a hearing, authorizes such use . . . in accordance with the provisions of [section 363]." 11 U.S.C. § 363(c)(2)(B). In particular, section 363(e) specifies that the Court shall condition the use of secured property "as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

17. Under section 361, adequate protection may be provided by periodic cash payments, or replacement liens, or relief constituting the "indubitable equivalent" of the creditor's interest. 11 U.S.C. § 361. Courts have also recognized that when the value of the collateral available to the secured lender exceeds the amount of the secured claim, the excess value or "equity cushion," without more, will adequately protect the secured lender's interest.

*See, e.g., In re Shaw Industries, Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003) (“The existence of an equity cushion alone can constitute adequate protection.”). The adequate protection offered need only “encompasses the decline in the value of the collateral only, rather than perpetuating the ratio of the collateral to the debt.” *See In re Delta Resources, Inc.*, 54 F.3d 722, 729-30 (11th Cir. 1995).

18. The relief requested will permit the Debtor to operate while adequately protecting BMO. Therefore, this motion seeks authority to use Cash Collateral in this manner through and including June 30, 2017, or until such other time as this Court may order.

**WHEREFORE**, Crapp Farms Partnership requests that this Court enter an order: **(i)** authorizing Debtor to use the Cash Collateral; **(ii)** granting adequate protection; **(iii)** setting a hearing on the motion to consider the entering of an interim order authorizing and approving the use of Cash Collateral pending a final hearing on the motion; and **(iv)** setting a final hearing on the Debtor’s use of cash collateral during this case.

Dated this 5 day of May, 2017.

**Krekeler Strother, S.C.**

By: 

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# **EXHIBIT A**







	Utilities	565	565	565	565	565	565	565	3,390
	Utilities Expense Total	565	565	565	565	565	565	565	3,390
-	Interest Expense-Other								
	Interest Expense	1,806	1,535	1,390	1,949	1,398	1,350		9,428
	Interest Service Charge	77	365	313	135	89	93		1,072
	Interest Expense-Other Total	1,883	1,900	1,703	2,084	1,487	1,443		10,500
-	Other Tax Expense								
	Taxes and Licenses	0	11,012	1,497	5,375	42,838	0		60,722
	Other Tax Expense Total	0	11,012	1,497	5,375	42,838	0		60,722
	Expenses Total	141,393	169,672	164,092	196,109	212,517	270,791		1,154,574

## CRAPP EXCAVATING, LLC

## 2017 Cash Budget

		Budget	Budget	Budget	Budget	Budget	Budget	
5/1/2017	6/1/2017	7/1/2017	8/1/2017	9/1/2017	10/1/2017			
5/31/2017	6/30/2017	7/31/2017	8/31/2017	9/30/2017	10/31/2017			
<b>Revenue</b>								
<b>- Gross Receipts or Sales</b>								
Custom Work	34,600	117,395	1,611	92,738	126,035	98,101	470,480	
Tiling Revenue	1,500	0	1,500	0	0	0	3,000	
<b>Gross Receipts or Sales Total</b>	<b>36,100</b>	<b>117,395</b>	<b>3,111</b>	<b>92,738</b>	<b>126,035</b>	<b>98,101</b>	<b>473,480</b>	
<b>Expenses</b>								
<b>- Labor Expense</b>								
Labor Benefits Life Insurance	101	101	101	101	101	101	606	
Labor Wage Expense	17,123	13,578	12,847	17,103	14,207	19,600	94,458	
<b>Labor Expense Total</b>	<b>17,224</b>	<b>13,679</b>	<b>12,948</b>	<b>17,204</b>	<b>14,308</b>	<b>19,701</b>	<b>95,064</b>	
<b>- Pension &amp; Profit Sharing Plans</b>								
Labor Benefits Pension Expense	270	281	250	300	255	491	1,847	
<b>Pension &amp; Profit Sharing Plans Total</b>	<b>270</b>	<b>281</b>	<b>250</b>	<b>300</b>	<b>255</b>	<b>491</b>	<b>1,847</b>	
<b>- Payroll Taxes</b>								
Labor FUTA Taxes	0	0	0	0	0	0	0	
Labor Payroll Taxes	1,096	1,411	869	1,132	1,301	1,027	6,836	
Labor SUTA taxes	0	0	1,801	0	0	0	1,089	
<b>Payroll Taxes Total</b>	<b>1,096</b>	<b>1,411</b>	<b>2,670</b>	<b>1,132</b>	<b>1,301</b>	<b>2,116</b>	<b>9,726</b>	
<b>- Fuel Expense</b>								
Fuel Expense	7,600	7,600	7,600	7,600	7,600	7,600	45,600	
<b>Fuel Expense Total</b>	<b>7,600</b>	<b>7,600</b>	<b>7,600</b>	<b>7,600</b>	<b>7,600</b>	<b>7,600</b>	<b>45,600</b>	
<b>- Insurance Expense</b>								
Insurance - Equipment	593	593	593	593	593	593	3,558	
Insurance - Liability	655	655	655	655	655	655	3,930	
Insurance - Worker's Comp	602	602	602	602	602	602	3,612	
<b>Insurance Expense Total</b>	<b>1,850</b>	<b>1,850</b>	<b>1,850</b>	<b>1,850</b>	<b>1,850</b>	<b>1,850</b>	<b>11,100</b>	
<b>- Marketing Expense</b>								
Marketing	170	170	170	170	170	170	1,020	
<b>Marketing Expense Total</b>	<b>170</b>	<b>170</b>	<b>170</b>	<b>170</b>	<b>170</b>	<b>170</b>	<b>1,020</b>	
<b>- Professional Services Expense</b>								
Professional Services	4,730	2,593	0	41,041	11,438	20,235	80,037	
<b>Professional Services Expense Total</b>	<b>4,730</b>	<b>2,593</b>	<b>0</b>	<b>41,041</b>	<b>11,438</b>	<b>20,235</b>	<b>80,037</b>	
<b>- Rent / Lease Expense (Veh.Mach.&amp; Equipment)</b>								
Rent Equipment	0	0	0	4,446	14,635	3,447	22,528	
Rent Lease	1,788	1,788	1,788	1,788	1,788	1,788	10,728	
<b>Rent / Lease Expense (Veh.Mach.&amp; Equipment) Tot</b>	<b>1,788</b>	<b>1,788</b>	<b>1,788</b>	<b>6,234</b>	<b>16,423</b>	<b>5,235</b>	<b>33,256</b>	
<b>- Repair / Maintenance Expense</b>								
Repair-Equipment	6,474	9,873	13,494	8,940	9,176	10,000	57,957	
<b>Repair / Maintenance Expense Total</b>	<b>6,474</b>	<b>9,873</b>	<b>13,494</b>	<b>8,940</b>	<b>9,176</b>	<b>10,000</b>	<b>57,957</b>	
<b>- Supplies Expense</b>								
Supplies/Materials	6,500	2,000	32,507	2,000	12,179	8,878	64,064	
<b>Supplies Expense Total</b>	<b>6,500</b>	<b>2,000</b>	<b>32,507</b>	<b>2,000</b>	<b>12,179</b>	<b>8,878</b>	<b>64,064</b>	
<b>- Machinery Hire Expense</b>								
Custom Hire	500	700	1,000	3,350	1,950	1,785	9,285	
<b>Machinery Hire Expense Total</b>	<b>500</b>	<b>700</b>	<b>1,000</b>	<b>3,350</b>	<b>1,950</b>	<b>1,785</b>	<b>9,285</b>	
<b>Expenses Total</b>	<b>48,202</b>	<b>48,202</b>	<b>48,202</b>	<b>48,202</b>	<b>48,202</b>	<b>48,202</b>	<b>408,956</b>	